

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3880-09
Bill No.: Perfected SS for SCS for SBs 969, 673 & 855
Subject: Crimes and Punishment
Type: Original
Date: April 4, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	(More than \$100,000) to Unknown	(More than \$100,000) to Unknown	(More than \$100,000) to Unknown
Total Estimated Net Effect on <u>All</u> State Funds	(More than \$100,000) to Unknown	(More than \$100,000) to Unknown	(More than \$100,000) to Unknown

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety – State Highway Patrol, Department of Social Services, Department of Elementary and Secondary Education, Office of Administration**, and the **Boone County Sheriff’s Department** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Prosecution Services** assume prosecutors could absorb the costs of the proposed legislation within existing resources.

Officials from the **Office of State Courts Administrator** assume some cases may become protracted, but would not expect a significant increase in the workload of the courts.

Officials from the **Office of State Public Defender** assume existing staff could continue to provide representation in cases arising where indigent persons were charged with statutory rape or sodomy or child abuse. However, these cases could become more time consuming due to the fact that anyone convicted would now have to serve at least 85% of their time. The Public Defender can provide representation to indigent persons accused of having sexual contact with an inmate with existing staff. Last FY, the State Public Defender System provided representation in 182 rape cases and 87 sodomy cases. In response to similar proposals, officials from the Office of State Public Defender assumed existing staff could provide representation for those 20-25 cases arising where indigent persons were charged with the new crime of enticing a child. Passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Office of Attorney General (AGO)** assume an unknown cost savings pursuant to Section 632.483 because the requirement that a potential sexually violent predator be evaluated by a psychiatrist or psychologist will prevent the AGO from having to hire expert witnesses for certain cases.

Officials from the **Department of Public Safety – Director’s Office (DPS)** assume the proposed legislation only authorizes the Department of Public Safety to create the Missouri Regional Computer Forensics Lab. Creation of the lab will depend on state appropriations, federal funds, and other funding sources. Therefore, DPS assumes the proposal would have an unknown cost.

ASSUMPTION (continued)

Oversight assumes the proposal would have no fiscal impact on the Department of Public Safety because it does not require the creation of the Missouri Regional Computer Forensics Lab (RCFL). If the DPS desires to create the RCFL, the funding could be requested through the appropriations process.

Officials from the **Department of Mental Health (DMH)** assume the addition of attempted forcible rape and attempted forcible sodomy to the definition of “dangerous felony” will require that forensic clients acquitted of these two crimes have release hearings in the court which committed them rather than the probate court of the county of the facility in which they reside. The fiscal impact would be minimal since there are few clients with these charges. The changes in the sex offender registration will require that additional forensic clients have to register as a sex offender. There would be no appreciable fiscal impact as the result of this requirement. Unlike similar bills which had registration language that did not specifically include NRGIs (Not Guilty by Reason of Insanity) and CSPs (Criminal Sexual Predators), the language in this bill includes NRGIs and CSPs in the registration requirements. The changes in the registration requirements would have no appreciable fiscal impact because the registration requirements are at the local level and are the responsibility of the offender and the local law enforcement agencies.

This bill includes the DMH as an agency receiving liability immunity except for gross negligence or willful misconduct. There is no fiscal impact to the DMH under this immunity clause. This bill does not include the Department of Corrections risk assessment language and, therefore, all anticipated costs associated with it are removed. The previous language which increased the number of individuals considered for commitment as a Sexually Violent Predator has been removed. Therefore, there would be no fiscal impact.

In summary, this legislation should have no significant impact to the DMH.

Officials from the **Department of Corrections (DOC)** have determined the following sections would fiscally impact their department:

§556.061. Forcible rape and forcible sodomy are added to the list of dangerous felonies in this section. Adding forcible rape and forcible sodomy to the list of dangerous felonies appears to be unnecessary because both offenses are listed as dangerous felonies in 556.061, section 8.

An examination of DOC offense records of inmates with a conviction for one of these two offenses but without a dangerous felony indicator indicated that the few such offenders had either 1) been convicted of the offense as inchoate and were, therefore, of a lesser felony class or 2) the offender had been convicted of a sex offense other than forcible rape or forcible sodomy but had been charged under those statutes (566.030 or 566.060).

ASSUMPTION (continued)

There is no indication from DOC records that some convictions for forcible rape or forcible sodomy are not being classed as dangerous felonies and no fiscal impact is expected from this component of the bill.

§566.145. This proposed legislation criminalizes sexual intercourse or deviate sexual intercourse between correctional staff and an inmate and is punishable as a class C felony. Offender sexual contact is currently prohibited in §217.405, also punishable as a class C felony. The DOC's procedure strictly prohibits the type of criminal behavior outlined in this bill. Class C felons have an average length of stay in prison of 3.8 years. There were no admissions to DOC in FY01 for offender sexual abuse by an employee. Supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

§589.430. It is unknown how many qualifying sex offenders will be under community supervision at the time when assessments will need to be performed. The DOC has no means to gauge how many qualifying sex offenders are in the community, but not under the DOC's supervision. It is unknown how that number will be determined, and under what authority the DOC will be able to compel these registrants to submit to an assessment.

The proposal does not require that this assessment be completed by a qualified mental health professional, therefore, the next most likely assessors would be Probation and Parole (P&P) Officers. The Institutional Parole Officers (IPOs) would be required to provide the risk assessment on sex offenders leaving prison. The field P&P officers would be responsible for completing the risk assessment on newly opened sex offender probation cases. Both of these routine assessments would be additional workload factors for the existing P&P officers. It is unknown how the DOC would fund/staff the one-time, retrospective assessment of all sex offenders under supervision and sex offenders required to register, but not under the department's supervision.

This bill requires a risk assessment instrument in addition to the more general risk assessment process to be administered which contains the listed elements. The language includes most of the risk factors currently believed to predict sexual recidivism. However, that literature is constantly changing and new risk factors are being identified and former risk factors discarded. When the current risk factors are given statutory prominence, it would take subsequent statutory changes to modernize or update the risk assessment requirements. The Notice Guidelines Committee could procedurally update assessment requirements to keep them current. Committee expenses cannot be estimated.

ASSUMPTION (continued)

Several instruments would need to be scored by the P&P officers to address the statutorily required risk factors: 1) RRASOR (Rapid Risk Assessment For Sex Offense Recidivism), 2) MnSOST-R (Minnesota Sex Offender Screening Tool- Revised) and the PCL-SV (Hare Psychopathy Checklist- Screening Version) or the PCL-R (full Hare PCL). At a minimum, it would take the P&P officer 2 to 3 hours to review departmental records and score these three instruments. If inadequate records existed, an interview of the offender to gain enough information would be required if there was to be any confidence in the scoring of the instruments. This additional interview would be another workload factor.

DOC Behavioral Health Services Administrators understand this model legislation has been enacted in other states to reduce the length of the registration time period for those offenders judged to be low and moderate risk. Missouri would still require lifetime registration of all sex offenders even those judged to be low risk to re-offend.

The DOC's requirement to offer and successfully complete sex offenders from the MO Sex Offender Program (MoSOP) may prove to be more difficult to fulfill. In most offenders' cases, the self-report information required to successfully complete MoSOP would only serve to increase their level of assessed risk in this end of confinement risk assessment process. More offenders would refuse to attempt MoSOP to avoid self-incrimination that would enhance their risk at being civilly committed as a sexually violent predator or being placed in the high-risk group with significant notification requirements. DOC Administrators in this field do not believe that the scientific literature indicates that increased notification requirements has any impact on sex offender re-offense rates. Failure to register as outlined could also result in incarceration or supervision costs.

This section also requires the DOC to maintain a database of information on each offender, provide notification to the victims, DPS and DSS and respond to public inquiries on the offender's location, aliases, physical description and nature of convictions. Additional staff would be required to organize and disseminate this information. Modification of the Vines (Victims Notification) Program and the Offender Management database (OPII) would be required and this would be costly. Staff may be required in the Victims' section as well.

Estimated fiscal impact for this section is estimated to be significant or well in excess of \$100,000 per year.

ASSUMPTION (continued)

§632.483 This section seems to be aimed at including additional sex offenses in the list of qualifying offenses for civil commitment as a sexually violent predator. If included therein, the revised section would add the following qualifying sex offenses for sexually violent predator consideration: 1) Statutory rape, second degree; 2) Statutory sodomy, second degree; and 3) Sexual misconduct, first, second and third degrees. The revised language would remove Abuse of a Child when it involves sexual contact [§568.060.1(2)] from the list of qualifying offenses.

The fiscal impact of this section change would send between 30-40% more inmate sex offenders to the Sex Offender Assessment Unit (SOAU) staff for second-level, Sexually Violent Predator (SVP) evaluations. Since the services are now provided under a bid contract which was let with different workload assumptions in the RFP, increasing this workload number may prompt the contractor to exercise the contract provision that allows them to ask for funds for increased workload. The cost of this would be unknown.

§566.151. The new crimes created in this section would expand the unknown aspect of the cost to the DOC.

§43.653. The new crime created in this section would expand the unknown aspect of the cost to the DOC. Increased technology for battling internet crime has the potential to fiscally impact future DOC offender population (due to more arrests and resulting sentence to DOC); however, this would be addressed by normal budgetary request procedures at the time of the resulting increase.

In summary, passage of this bill has the potential to have significant fiscal impact for the DOC or in excess of \$100,000 per year.

<u>FISCAL IMPACT - State Government</u>	FY 2003	FY 2004	FY 2005
GENERAL REVENUE FUND			
<u>Savings</u> – Office of Attorney General			
Decreased expert witness costs	Unknown	Unknown	Unknown
<u>Costs</u> – Department of Corrections			
Incarceration/probation costs	(Less than	(Less than	(Less than
(§§566.145 and 566.151)	\$100,000)	\$100,000)	\$100,000)
Sex offender assessment, database,	(More than	(More than	(More than
program (§589.430)	\$100,000)	\$100,000)	\$100,000)
Sexually violent predator (§632.483)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
	(More than	(More than	(More than
	<u>\$100,000)</u>	<u>\$100,000)</u>	<u>\$100,000)</u>
Total costs – DOC			
ESTIMATED NET EFFECT ON	(More than	(More than	(More than
GENERAL REVENUE FUND	\$100,000) to	\$100,000) to	\$100,000)to
	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2003	FY 2004	FY 2005
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would make information in the sexual offense registry available upon a request from a youth service agency or provider. (§43.540)

The proposal would authorize the Department of Public Safety to create the Missouri Regional Computer Forensics Laboratory (RCFL). The RCFL would combine local, state, and federal resources to research and combat computer and Internet-related crimes. (§43.653)

DESCRIPTION (continued)

The proposed legislation would require the board of probation and parole to consider information listed on the juvenile sex offenders registry if the offender being considered for parole is less than twenty-one years old. (§217.690)

The proposal would include attempted forcible rape and attempted forcible sodomy in the definition of dangerous felonies to Missouri statutes. (§556.061)

The proposal would create the class C felony of sexual contact with an inmate. A person who is an employee of or assigned to work in any correctional facility who has sexual intercourse or deviate sexual intercourse with an inmate or resident of the facility would be guilty of the crime. The victim's consent would not be an affirmative defense. (§566.145)

The proposal would create the crime of enticement of a child, a class C felony unless the person has previously pled or been found guilty of enticement of a child or certain other offenses, in which case it would be a class B felony. Attempting to entice a child would be a class D felony. (§566.151)

This proposal would require registration as a sexual offender for felony sexual offenses or for misdemeanor sexual offenses when the victim is under 18 years of age. The proposal would also require persons required to register as sex offenders under current law to do so with county or city not within a county officials within 10 days of moving to another county or city not within a county or being released from custody. (§589.400)

The completed offender registration form would be available to entities other than members of the criminal justice system, as provided by law, through the Missouri Uniform Law Enforcement System (MULES). (§589.410)

Law enforcement agencies and their employees, state officials, Departments of Public Safety, Corrections, Mental Health, Social Services and their employees would be immune from liability regarding confidentiality of information contained in the sexual offender registry. (§589.417)

The proposal would require sex offenders to be assessed on the basis of the offender's risk to commit any act that would require the offender register as a sexual crime offender. Assessment would be required in the following circumstances: (1) All offenders required to register that have not been previously assessed; (2) Department of Corrections releases offender for supervision in the community; (3) Department of Corrections releases offender due to completion of sentence or at the direction of a court; (4) Department of Corrections accepts offender for supervision in the community upon court order; and (5) Department of Corrections is advised by the department of another state that the offender is residing, employed, carrying on a vocation, or is a student in this state. (§589.430)

DESCRIPTION (continued)

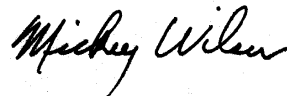
Current law requires either the Department of Corrections or the Department of Mental Health to inform the Attorney General and the appropriate multidisciplinary team of certain identifying information and provide them with documentation of treatment history and institutional adjustment for individuals who meet the criteria of sexually violent predators. This proposal would add the requirement that a psychiatrist or psychologist determine whether the person meets the definition of a sexually violent predator. (§632.483)

This proposal contains an emergency clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Social Services
Office of State Public Defender
Office of State Courts Administrator
Department of Mental Health
Department of Public Safety
 – Missouri State Highway Patrol
 – Director's Office
Office of Prosecution Services
Department of Elementary and Secondary Education
Office of Administration
Office of Attorney General
Department of Corrections
Boone County Sheriff's Department



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